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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to	)	WT Docket No. 96-162
Establish Competitive Service Safeguards for	)	
Local Exchange Carrier Provision of	)	
Commercial Mobile Radio Services	)	

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COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

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SUMMARY

Adequate safeguards for BOC provision of in-region CMRS are essential to the development of wireless competition. Comcast has consistently supported structural safeguards since the early days of the Commission's rulemakings regarding Personal Communications Services, and Comcast continues to support structural separation because it is the most effective, most deregulatory safeguard method available. Structural separation can in many instances prevent potentially market-dislocating anticompetitive behavior from occurring, whereas other types of safeguards, such as those proposed in the Notice, only attempt to catch anticompetitive behavior after-the-fact. Notwithstanding its recent growth, the CMRS marketplace is in its infancy, and new entrants will not be able to compete with the BOCs if the BOCs are given free reign to discriminate and cross-subsidize. The stakes are too high and the temptation too great — absent adequate safeguards, wireless competition from new, non-BOC affiliated entities will be crushed by the BOCs before it can leave the cradle.

The Notice makes the case for the retention and expansion of structural safeguards to all in-region BOC CMRS. Yet, inexplicably, the Commission proposes to eliminate or sunset structural separation safeguards which are plainly still needed. In their place, the Commission proposes the adoption of a separate affiliate regulatory regime based on the Pacific Bell PCS Nonstructural Safeguards Plan without ever having come to grips with whether the Plan fully addresses competitive concerns. If the Commission chooses to toss aside the one regulatory method that is in keeping with the deregulatory theme of the Telecommunications Act of 1996 by adopting separate affiliates, it must do more than merely rubber-stamp the Pacific Bell plan. As part of any regulatory regime, the Commission must adopt expanded accounting, CPNI/joint

marketing, and certification requirements to prevent the BOCs from taking advantage of their monopoly power in the wireline marketplace and using it to their advantage in the wireless marketplace.

Over 75 years of government-granted monopoly power has made the BOCs bold, and their recent actions in fighting the Commission's interconnection rules show that they have no intention of moving gracefully into a competitive world. Until facilities-based competition in the wireline arena is established, any discussion of relaxing BOC safeguards is premature. Therefore, the Commission should expand structural separation to all in-region BOC CMRS activity and expanded accounting, CPNI/joint marketing and certification requirements must also be imposed and enforced. Absent meaningful, strong safeguards, wireless competition will be delayed, perhaps permanently.

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COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

Comcast Cellular Communications, Inc. ("Comcast"), by its attorneys, hereby submits its comments on the above-captioned rulemaking proceeding. Comcast has consistently urged the Commission to establish adequate safeguards for Bell Operating Company ("BOC") provision of commercial mobile radio services ("CMRS"), and in the early stages of the Personal Communications Services rulemaking proposed that structural separation be applied to all in-region BOC PCS.[1/] Until this Notice the Commission had failed to address the need for uniform safeguards; the Commission's delay must not continue. Without meaningful competitive safeguards, the BOCs will continue to take advantage of their undisputed monopoly power in the wireline marketplace to stunt and delay the development of wireless telecommunications competition. Current Section 22.903 structural separation safeguards should therefore be retained for in-region BOC cellular activity and expanded to encompass all in-region BOC CMRS.

1/ See, e.g., Reply to Oppositions, Amendment of the Communications Rules to Establish New Personal Communications Services, GEN Docket No. 90-314 (filed by Comcast Corporation on January 13, 1994) at 4.

Structural separation was recognized as a valuable safeguard against anticompetitive BOC activity by Congress when it passed the Telecommunications Act of 1996.[2/] The "Structural and Transactional Requirements" imposed on separate affiliates in Section 272 mirror current Commission Section 22.903 structural separation requirements, indicating that Congress was aware and supportive of the Commission's current structural separation regulatory regime. Because the 1996 Act did not principally focus on the wireless marketplace, no meaning can be placed on the absence of CMRS in the activities for which Section 272 imposes a separation requirement. Rather, Section 272 shows that Congress was fully aware of the protective power of requiring BOCs to conduct certain activities separately from their wireline businesses. If Congress had wanted to remove the Commission's separation requirement for provision of wireless services, it could have done so as part of the 1996 Act.

The structural safeguards of Section 22.903, while imperfect, by and large have proven effective in preventing marketplace abuse and these safeguards should be extended to all BOC in-region CMRS. The Commission should reject any watering down of the structural safeguards. In addition, the Commission must adopt adequate certification, accounting and CPNI/joint marketing rules to govern the relationship of BOC in-region CMRS and BOC monopoly businesses. These competitive safeguards must remain in place until telecommunications competition has been established.

2/ Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (the "1996 Act").

I. STRUCTURAL SEPARATION SHOULD BE EXTENDED TO ALL BOC IN-REGION BROADBAND CMRS.

The Notice recognizes that structural separation has been a straightforward, simple to administer method of detecting and protecting against abuse of monopoly market power. Current BOC structural separation requirements were imposed in recognition of the BOCs' dominant market position in the local exchange and exchange access markets to prevent the BOCs from leveraging their dominance into the then newly-created cellular service markets. These requirements:

> were specifically intended to protect BOC local exchange ratepayers by preventing cross-subsidization of the more competitive cellular service, and to prevent discriminatory interconnection practices with respect to the non-wireline cellular provider by requiring that the wireline and non-wireline entities exist independently from one another with respect to facilities, operations, management and other personnel. With respect to both cross-subsidization and interconnection, structural separation was believed to permit easier detection and disclosure of improper activities, and to reduce unnecessary regulatory intrusion into competitive or unregulated operations.[3/]

While the structural separation requirements were enacted in 1981 in the pre-AT&T divestiture era and much has changed in the telecommunications market in the intervening years, one thing has stayed the same: the BOCs are still dominant and have market power in their in-region local exchange markets. Indeed, as the Commission observes in the Notice, "we have recently found that our existing LEC/CMRS interconnection rules and policies are insufficient to protect against discriminatory interconnection practices and rates, and have tentatively concluded that further regulatory oversight and intervention will be needed for some time in the

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3/ Notice at ¶ 37.

future in order to prevent LECs from abusing their position of control over interconnection to the public switched telephone network."[4/]

In light of this recognition the Notice inexplicably proposes abandonment of structural safeguards in cellular and the general application of a far less effective set of CMRS safeguards to govern the relationship of BOCs with their in-region CMRS operations. Indeed, the Notice contains no rationale for abandoning structural separation, and the reasoning contained in the Notice actually supports retention of structural safeguards as to cellular and expansion of their safeguards to in-region BOC CMRS operations. For example, in the Notice the Commission finds that the market power of the BOCs in the landline local exchange and exchange access markets has remained relatively stable since BOC-cellular structural separation requirements were instituted in 1981, and finds that BOC power is likely to remain stable for some time.[5/] The Notice finds that the interconnection provisions of the 1996 Act are still being implemented, and that the BOCs retain control over public switched network interconnection within their markets.[6/] And the Notice also expresses concern "about the potential for abuses in provisioning, installation, maintenance and customer network design that might not be addressed adequately by the uniform nonstructural safeguards that we propose for LEC provision of CMRS . . . ."[7/] Meanwhile, the BOCs have filed suit against the Commission and are now seeking a stay with

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4/ Notice at ¶ 34.

5/ Notice at ¶ 42.

6/ Notice at ¶ 42.

7/ Notice at ¶ 48.

respect to the Local Competition Order,[8/] which had been intended to solve many of the impediments to competition established and maintained by the BOCs throughout the past 15 years.

These findings support the retention and expansion of structural separation requirements to all BOC in-region CMRS activity. Yet, in a fashion that seemingly ignores the findings in the Notice, the Commission proposes to eliminate or "sunset" Section 22.903 and replace its provisions with a less effective regulatory structure that will require more Commission oversight, not less. Contrary to the language in the Notice, the Commission's proposals do not move from a "regulatory model to the competitive paradigm established by the new legislation and the current telecommunications marketplace."[9/] Rather, they would eliminate straightforward, self-enforcing competitive safeguards with unproven regulations which, if they fail, would certainly impair and perhaps eliminate the competitive potential of wireless. There is simply no factual or legal predicate for such an action.

While structural separation has not prevented all market abuse, it has at least allowed non-BOC affiliated cellular providers to compete with BOC cellular operations.[10/] In view of the acknowledged, continued need for safeguards and the relative success of BOC-cellular structural separation, the Notice fails to explain the necessity for elimination of structural separation in

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8/ See First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325, released August 8, 1996 ("Local Competition Order").

9/ Notice at ¶ 10.

10/ See Notice at ¶ 47 (footnote omitted) ("We note that, during the period that structural separation has been in place, the market shares in each cellular service area have been divided on a roughly equal basis between wireline and nonwireline carriers.")

favor of affiliate transaction and accounting rules that must be constantly audited and policed in order to provide any deterrent effect.

The Notice entirely ignores the critical difference in the effect on competition of self-enforcing structural safeguards that prevent or make much more difficult many types of discrimination and cross-subsidies before they occur, as opposed to accounting safeguards that may increase the likelihood of such conduct. The use of structural safeguards affords the competitive market maximum protection. After-the-fact enforcement of accounting rules, however, gives the BOC benefits of its actions and greatly harms the competitive market in the interim. The Commission cannot fail to take account of this wide gap in effectiveness as it could spell the difference between success or failure for the many new entrants in the wireless market.

Indeed, the current legal wrangling over the Commission's implementation of the Section 251/252 interconnection requirements belies the Notice's assumption that there is now a reduced need for structural separation. Adopted in July before the Local Competition Order was adopted, the Notice implies that because the 1996 Act changes the framework for BOC provision of interconnection, a new regulatory paradigm is in order. Today, in October, we know that the BOCs intend to fight against the Commission's interconnection order every step of the way. The BOCs have successfully achieved at least a temporary stay of the Local Competition Order, and have given no indication that they intend to negotiate fairly with their competitors. Any relaxation of safeguards is thus premature, at least until competition is safely in place.

Additionally, the BOCs have yet to make a case that they have suffered competitively under a structural separations regime. BOC cellular affiliates have enjoyed smashing success, and the purported "cost savings" and "efficiencies" of integrated LEC wireless/wireline activity

have yet to be demonstrated.[11/] Without real, quantifiable evidence on the record that the cost of BOC structural separation is greater than its benefit, the Commission cannot arbitrarily adopt a new purportedly "deregulatory" regime.[12/] Accordingly, the Commission must not abandon effective safeguards. Structural separation requirements should be used until the wireline local exchange market is truly competitive as determined by an affirmative showing by an incumbent LEC that it no longer has in-region market power.

The BOC argument that structural separation creates a skewed competitive market is no longer valid because the main BOC goal -- to joint market wireless and wireline services -- was realized in the 1996 Act.[13/] The 1996 Act did nothing, however, to change the status of structural separation requirements. Indeed, Congress plainly knew how to order the Commission to adopt (or not adopt) structural separation or separate subsidiaries. For example, while Sections 272(a)(2)(B)(i) and 271(g)(3) of the 1996 Act do "not require" separate subsidiaries for interLATA CMRS, they do not limit the Commission's discretion and ability to conclude that separate subsidiaries are the best means of promoting wireless industry competition. Section 271 states that "[t]he Commission shall ensure that the provision of services authorized under

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11/ "Although the BOCs have alleged that there are cost savings to be realized from integrated operations, they have not presented a quantification of either the magnitude of these overall benefits, or the costs to the BOCs to continue to maintain structurally separate corporate affiliates for cellular service." Notice at ¶ 52.

12/ See, e.g., People of the State of California v. FCC, 39 F.3d 919, 925 (9th Cir. 1994) ("We therefore may require the agency to provide a reasoned analysis indicating that prior policies and standards are being deliberately changed, no casually ignored. . . . Moreover, if the record reveals that the agency has 'failed to consider an important aspect of the problem' or has 'offered an explanation for its decision that runs counter to the evidence before [it],' we must find the agency in violation of the APA.") (citations omitted).

13/ See Notice at ¶¶ 61-64.

subsection (g) by a Bell operating company or its affiliate will not adversely affect telephone exchange service ratepayers or competition in any telecommunications market"[14/] and Section 272 states that "[n]othing in this subsection shall be construed to limit the authority of the Commission . . . to prescribe safeguards consistent with the public interest, convenience, and necessity."[15/] Congress plainly intended to preserve the Commission's ability to adopt CMRS safeguards as the Commission deems appropriate, and Sections 271 and 272 of the 1996 Act show that Congress intended to do nothing to impair the Commission's ability to adopt structural separation for LEC and BOC provision of in-region CMRS. Moreover, the use of structural separation in other nascent competitive markets demonstrates Congress' support for such measures until competition in the local exchange becomes a reality.

II. THERE IS NO LEGAL IMPEDIMENT TO THE ESTABLISHMENT OF EFFECTIVE COMPETITIVE SAFEGUARDS.

Concerns about regulatory parity and the Sixth Circuit's Cincinnati Bell decision[16/] need not prevent the Commission from expanding the coverage of structural safeguards to all BOC in-region broadband CMRS activity. Cincinnati Bell questioned the Commission's differing treatment of cellular and PCS, not whether structural separation was an appropriate means of reaching that end. Expansion of the Section 22.903 requirements to all Tier 1 LECs would also be appropriate, but would not be necessary to meet the Sixth Circuit's mandate. As the non-BOC Tier 1 LECs generally do not have the vast expanses of dual wireless and wireline coverage as

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14/ 47 U.S.C. § 271(h).

15/ 47 U.S.C. § 272(f)(3).

16/ See Cincinnati Bell Telephone v. FCC, 69 F.3d 752 (6th Cir. 1995) ("Cincinnati Bell").

do the BOCs, they can be distinguished on that basis and could be subject to a different regulatory regime.

III. ADOPTION OF EFFECTIVE RULES IS A NECESSARY PREDICATE FOR SEPARATE AFFILIATES.

Despite the efficacy of structural separation, the Commission does not propose to expand its use to broadband CMRS. Instead, the Notice proposes to require LECs to maintain a watered down "separate affiliate" for their CMRS operations that would permit the sharing of personnel, including officers and directors, and thereby competitive information, and specifically proposes as a model the Pacific Bell PCS affiliate and Pacific Bell's nonstructural safeguards plan. Comcast believes that structural separation is a superior regulatory alternative that is far more consistent with the framework of the 1996 Act. A separate affiliate regulatory regime can only be effective if it is accompanied by rules that create the same type of a priori deterrent effect as full structural separation. Under any circumstances any competitive safeguard rules must stay in place until the wireline local exchange market is truly competitive.[17/] Accordingly, the adoption of a date certain for the sunset of safeguards is not in the public interest.

A. Adoption of Structurally Separate Affiliates Is Well Within the Commission's Authority.

In reviewing the impact of the 1996 Act on incumbent LEC competitive safeguards, Notice observes that "in light of the many separate affiliate requirements in the 1996 Act, it is

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17/ Any rules adopted should also apply to all incumbent in-region broadband CMRS regardless of the amount of spectrum used. Because advances in digital technology are making it possible to offer traditional two-way voice service using ever smaller frequency band widths, the safeguards adopted in this rule making should not be waived if a carrier holds an amount of frequency below some arbitrary amount. See Notice at ¶ 114.

evident that Congress has concluded as a general matter that such requirements, together with associated nondiscrimination safeguards, constitute an appropriate initial safeguard for BOC entry into the provision of certain competitive services, which can be phased out as markets become more competitive."[18/] While the 1996 Act does legislate relaxed regulation of incumbent LECs as they participate in some markets, it also legislates structural separation for incumbent LEC participation in other markets. It would be a mischaracterization of the 1996 Act to suggest that Congress was directing or even urging replacement of every Commission competitive safeguard, including structural separation of cellular and incumbent LEC monopoly operations.

As part of any safeguards plan adopted, the Commission should include a requirement that all officers and directors of the incumbent LEC and all of the officers and directors of the wireless separate affiliate certify on an annual basis that their affiliates are in compliance with all Commission rules relating to the relationship between these parties. Officers and directors of the incumbent LEC also should be required to certify that the LEC is complying with all Commission interconnection and other rules in its relationships with third-party carriers. Certification requirements would place no regulatory burden on the LECs and are commonly required by the Commission. Virtually every Commission application and form requires a certification, and the Commission already requires certifications from LECs that they are complying with aspects of the Commission's rules.[19/]

18/ Id. at ¶ 40 (emphasis added).

19/ See, e.g., 47 C.F.R. § 69.601(c) (requiring a certification that data submitted in connection with the Common Carrier Line Charge is "complete, accurate, and consistent with the rules of the Federal Communications Commission.")

The Commission should not eliminate the requirement for separate officers, directors and for the operation of the CMRS affiliate. While the current cellular requirement does not ensure independence on the part of the cellular separate subsidiary, it does create accountability for purposes of rule compliance and strengthens the ability of regulators to detect discrimination.

B. Present Accounting Safeguards Are Inadequate for Substantial Common Investment in Both Competitive and Non-Competitive Services.

The Notice suggests that current Part 64 accounting rules will be sufficient to detect and deter cross-subsidization. The use of Part 64, in a world where BOC nonregulated income will increasingly become a major source of BOC revenues, would be a serious mistake. BOC out-of-region services and long distance will all show up in nonregulated income, and in-region BOC telephony-video systems using common plant will make it difficult to determine what is and what is not a nonregulated cost. The Commission now has a statutory obligation to prohibit the subsidy of competitive services with noncompetitive services,[20/] and consequently must reassess existing tools to determine if they meet Congress' directive.

The Part 64 rules require Tier 1 LECs to allocate costs between regulated and non-regulated services. The result of the required cost separation of non-regulated costs is reflected in LEC annual ARMIS Reports as a mere two lines on the LEC's overall income statement, one listing the aggregate of "other nonoperating income," and the other listing the aggregate of "investments in affiliated companies."[21/]

20/ 47 U.S.C. § 254(k). Section 254(k) provides in part that: "A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition."

21/ See 47 C.F.R. § 32.7360.

This abbreviated reporting is not appropriate for CMRS. Because of the summary nature of the Part 64 cost accounting rules, they provide the Commission and other interested parties very little financial information about the wide range of potential investments that are grouped together under "other nonoperating income" and "investments in affiliated companies." Further, because these rules require allocation of costs only between common carrier and non-common carrier services using a carrier's forecast of relative use, they currently provide no mechanism for assuring that costs are in fact properly allocated. The rule does not provide any direction on the question of whether a cost is in fact incurred for the benefit of regulated telephone ratepayers or for the benefit of the BOC CMRS operations. Even assuming the Commission modifies Part 64 to require the LECs to break out CMRS costs from monopoly landline and other investments, the Commission has no policy concerning LEC determinations of what constitutes a CMRS cost as opposed to a telephone cost.

Part 64 rules give LECs wide discretion to allocate costs between their regulated and non-regulated entities because the three-year forward looking forecast of the allocation of central office equipment and outside plant investment between regulated and non-regulated activities is entirely controlled by the subjective judgment of self-interested LEC management. Without changes in current accounting safeguards, the LECs will have enormous flexibility, incentive and opportunity to allocate the majority of their CMRS costs to their monopoly landline telephony business. For this reason, the Commission's audit process is not designed to make judgments on decisions that could create a substantial ratepayer cross-subsidy.

The LECs have claimed that they do not have an incentive to cross-subsidize because of price cap regulation.[22/] As the Commission has recognized, however, current price cap regulation allows LECs to "game the system" on a yearly basis by moving from high price caps with no sharing to lower price caps with sharing as LEC anticipated revenues and future sharing obligations dictate.[23/] If LECs misallocate costs to regulated telephony, thereby artificially depressing telephony earnings, virtually all of the productivity benefit from the price cap is lost. Consequently, incumbent LECs have every incentive to transfer costs from unregulated CMRS ventures to their regulated telephone rate base.

The Commission must require LECs to disclose fully all costs and revenues associated with CMRS on a line-item basis so that any cross-subsidization would be detectable on inspection. Disclosure requirements must be imposed on all LEC affiliates involved with CMRS activity, not merely on the CMRS licensee itself, to avoid corporate structures that otherwise would allow LECs to camouflage their true CMRS costs. For example, in the Pacific Bell nonstructural safeguards plan the Commission is using as a model in this proceeding, Pacific Bell divided its PCS license and PCS activity into at least two separate entities.[24/] LEC decisions on how to structure their corporate holdings must not by default allow them to avoid their

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22/ See, e.g., Notice at ¶¶ 45 - 46.

23/ See, e.g., Notice of Proposed Rulemaking, Allocation of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, CC Docket No. 96-112, FCC 96-214, released May 10, 1996 at ¶¶ 58 - 63.

24/ See, Plan of Nonstructural Safeguards Against Cross-Subsidy and Discrimination, filed by Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis on July 10, 1995.

obligations. All disclosure requirements should also date back to at least the date wireless activity began so as to capture the LECs' already significant investments.

Rampant cross-subsidization can be avoided only by revising the rules in a manner that does not leave vital cost allocation decisions to the self-interested LEC. LECs providing in-region CMRS must be required to disclose adequately detailed accounting information. Only if this information is available to federal and state regulators and the public will LECs be less likely to attempt to cross-subsidize. The question of what is or is not a CMRS cost should not be answered by the LECs alone. Federal and state regulators and competitors must have access to sufficient financial data to make informed decisions on what costs properly should be included in the telephone rate base.

C. CPNI and Joint Marketing Have Substantial Competitive Implications.

The LECs have a huge competitive advantage over other potential service providers because of their unique access to CPNI and substantial information regarding customer calling habits. Any regulatory framework that does not eliminate these overwhelming competitive advantages will fail to encourage the development of wireless competition, a policy objective the Commission has recently and quite properly espoused.

Congress permitted LECs to joint market CMRS and landline service in Section 601(d) of the 1996 Act. The intent was to "help put the Bell operating companies on par with their competitors."[25/] Consequently, when the incumbent LECs joint market CMRS with their monopoly and other services, they should do so from a position that does not disadvantage other

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25/ 141 Cong. Rec. H8456 (daily ed. August 4, 1995) (Statement of Mr. Burr).

competitors. Central to any attempt to keep the CMRS industry competitive will be strict limitations on incumbent LEC use of customer proprietary network information ("CPNI").

Comcast agrees with the Notice's observation that Section 222(c)(1) of the 1996 Act does not permit incumbent LECs unrestricted access to customer CPNI.[26/] LECs can joint market their wireless and wireline services, but they should be prohibited from using their access to CPNI to do so absent explicit, informed customer consent. CPNI gained in the provision of incumbent LEC monopoly service should not be permitted to be used to market wireless services unless the LEC obtains written customer authorizations that: (1) are separate from any promotional or other material sent by the requesting LEC; (2) are separate from any customer incentive plan or other inducements; (3) are signed and dated by the telephone subscriber; (4) have readable print of a sufficient size with legible type; (5) have unambiguous language confirming the customer's billing name, address and each telephone number covered by the CPNI request; (6) state that the customer is under no obligation to release his or her CPNI; and (7) explicitly state that the customer is knowingly allowing the disclosure of his or her CPNI despite any obligation to do so. Blanket consents should be invalid; release of CPNI information must be obtained separately for each type of incumbent LEC service.

Consumers have a valid expectation of privacy concerning their telephone usage records, and the incumbent LECs must not be permitted to encourage their customers to sign away their privacy rights unless those customers fully understand what they are signing. Strict disclosure requirements are necessary because negative option disclosures and disclosures tied to promotional offerings have already surfaced in an anticompetitive manner, showing that the

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26/ See Notice at ¶ 71.

incumbent LECs have no intention of protecting the customers they claim to serve. For example, Pacific Bell is reportedly tying disclosure of CPNI to a travel and awards program,[27/] and Southwestern Bell's cellular affiliate Cellular One in Washington is requesting CPNI disclosure through a negative option statement (see attached). The Cellular One negative option is especially egregious as it requires the customer to take affirmative action to prevent Southwestern Bell from using a customer's CPNI. Further, the negative option allows the entire "SBC Communications, Inc. family of companies" to use a customer's CPNI, giving Southwestern Bell unlimited rights to create new companies with access to valuable customer information.

With strong CPNI rules in place the Commission could allow incumbent LECs to joint market wireless and wireline services as proposed in the Notice.[28/] Without strong CPNI rules in place, however, the Congressional intent behind Section 601(d) would be shattered because the incumbent LECs would not be operating "on par" with their competitors. Rather, incumbent LECs with unfettered access to wireline CPNI would be operating with a huge advantage in comparison with their wireless competitors. To this end, to avoid unequitable competitive outcomes, LECs that obtain customer consent to release customer CPNI to their CMRS affiliates should be obligated to share that CPNI with any requesting non-affiliated carrier. Such an obligation would place no burden on the LEC, but would merely require the LEC to act as a

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27/ See Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221, Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Comments of AirTouch Communications, Inc. (filed June 11, 1996) at 9 (describing "Pacific Bell Awards Program" under which Pacific Bell is tying release of CPNI to a travel and awards program).

28/ Id. at ¶ 64.

clearing house that provides equal access to CPNI.[29/] Incumbent LECs have a built-in competitive advantage; they must not be permitted to leverage their years of monopoly power in the wireline telephony business into dominance in the wireless industry through unfair usage of CPNI.

D. Reasonable Interconnection Cannot Be Counted as a Competitive Safeguard.

The 1996 Act's interconnection provisions provide a new starting point for interconnection negotiations with the BOCs. However, as stated above, the Commission has found that, at least in the near future, there is "imbalance" in the negotiating power between BOCs and CMRS providers that may require the maintenance of competitive safeguards.[30/] While the Commission's Local Competition Order is generally faithful to the requirements of the 1996 Act and represents a substantial step in the right direction, the Commission correctly recognizes that the potential for BOC discrimination and foot dragging in interconnection compensation has not diminished one iota, and the effectiveness of national interconnection rules cannot be judged at this time.

As an initial matter, incumbent LECs are ferociously fighting the implementation of the Local Competition Order. They are unwilling to give up one penny of revenue extracted from cellular competitors in illegal interconnection contracts unless they are forced to do so, likely by the highest court in the land. This is understandable because every way the LEC incumbents can weaken their potential competitors will assist them in maintaining dominance of their markets.

29/ At a minimum, incumbent LECs should be required to offer third parties the opportunity to use all mechanisms for obtaining access to CPNI, such as bill inserts, that are made available to the LEC's affiliates, on reasonable terms and conditions.

30/ Notice at ¶ 34.

As a result, it is far too early to conclude that fairer, cost-based interconnection will be quickly implemented and that reasonable interconnection is the panacea for all competitive ills.

IV. CONCLUSION

As reflected in the waiver requests cited in the Notice,[31/] the LECs have become increasingly strident in their assertions that they should be treated the same as everyone else in the wireless industry. The simple fact, however, is that LECs are not like other wireless industry participants. After over 75 years of government-granted monopoly status LECs have amassed enormous capital, plant and equipment, and human resources as well as essential bottleneck facilities that can be used to forestall competition. Prompt action to promote LEC-wireless competition is urgently needed in the form of new wireless safeguards.

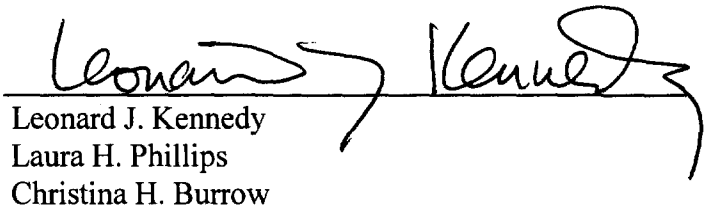
The Commission cannot, however, summarily eliminate a safeguard as effective as structural separation has been in detecting certain forms of discrimination. The success of structural safeguards has been at least in part due to their non-intrusive nature. Because of the complete structural separation requirement, elaborate accounting manuals and regulatory oversight are rendered unnecessary, and structural separation is, therefore, the least "regulatory" option available to the Commission. Accordingly, structural rules should be retained for in-region BOC cellular entities, and should be expanded to include all BOC provision of both cellular and other potentially competitive broadband CMRS services. These rules are necessary until BOC market power is eliminated.

31/ Notice at ¶ 9.

In connection with this reassessment of regulatory safeguards, the Commission must also adopt expanded accounting, CPNI and joint marketing restrictions as outlined above. In any case, prompt action to adopt rules on incumbent LEC safeguard issues is vital. Without adequate policies, the incumbent LECs will leverage their monopoly power from their wired networks into new markets and into the wireless industry. The Commission must not allow the LECs to succeed in preserving their monopoly power at the expense of consumers and the public interest.

Respectfully submitted,

COMCAST CELLULAR COMMUNICATIONS, INC.



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October 3, 1996

YOUR CUSTOMER PROPRIETARY NETWORK INFORMATION RIGHTS

In the normal course of providing your cellular telephone service, Cellular One maintains certain information about your account. This information, when matched to your name, address and cellular billing number, is known as your customer-specific "Customer Proprietary Network Information", or CPNI for short. Examples include optional services you have, as well as cellular telephone and cellular long distance and paging billing records, directory assistance charges, usage data, and calling patterns.

Currently, Cellular One may use your CPNI to market our services to you. As a valued customer of Cellular One, we are pleased to provide you a full range of products, services, and features to meet your telecommunications needs. Unless you request that your CPNI be considered "restricted", Cellular One may also use your CPNI to market certain telecommunication products, services or features, that may not have been historically available through Cellular One and/or which may be available to you from an affiliate of Cellular One. Any use of your CPNI by a company other than Cellular One would be limited to companies affiliated with Cellular One and SBC Communications Inc. Your CPNI will not be disclosed to any entity that is not affiliated with the Cellular One and SBC Communications Inc. family of companies.

If you wish to have your customer-specific CPNI considered "restricted", please call your Cellular One Service Center at 1-800-CELL-ONE, during weekday business hours. Simply tell your service representative you wish to restrict our use of your customer-specific CPNI. There will be no charge to restrict your customer information and the restriction will remain in effect until you notify us otherwise.

Please note that restricting your customer information will not prevent Telemarketing calls to you from companies other than Cellular One. In addition, restriction will not eliminate all Cellular One marketing communications with you:

1) You could still receive marketing contacts from us that are not based on your customer-specific CPNI.
2) Cellular One is permitted to use your customer-specific CPNI to market telephone services we offer that are not available to you from another source.
3) Even if your CPNI is restricted, we may still use it to market those telephone services or features that may be available to you from a source other than Cellular One, if you contact us and inquire about them.